

PATENT

THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s) : Robert Curley et al.
Application No. : 09/740,804
Filed : December 21, 2000
Entitled : METHOD AND APPARATUS
FOR PROVIDING
MEASUREMENT, AND
UTILIZATION OF,
NETWORK LATENCY IN
TRANSACTION-BASED
PROTOCOLS
Docket No. : EMPIR-046PUS

Group Art Unit: 2185

Examiner: Not Yet Assigned

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Certificate of Mailing (37 C.F.R. 1.8(a))

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first-class mail in an envelope to: Assistant Commissioner for Patents, Washington, D.C. 20231 on the date set forth below.

23-Sep-2002
Date of Signature
and Mail Deposit

By: David W. Rouille
David W. Rouille
Reg. No. 40,150
Attorney for Applicant(s)

Assistant Commissioner for Patents
Washington, D.C. 20231

REVOCATION OF POWER AND APPOINTMENT OF NEW POWER OF ATTORNEY

Sir:

Empirix Inc., having a principal office at 1430 Main Street, Waltham, MA 02451, represents that it is the owner of record of all title, right and interest in the above-identified patent application by virtue of an assignment dated December 28, 2002, a copy of which is enclosed herewith. Assignee has reviewed the evidentiary documents pertaining to the rights of Assignee

to take this action and certifies that, to the best of Assignee's knowledge and belief, title to the above-identified patent application is in Assignee.

The undersigned, whose title is supplied below, is empowered to act and authorized to execute this document on behalf of the Assignee and hereby revokes all previous powers in the above-identified application and respectfully requests the appointment of:

Christopher S. Daly	Reg. No. 37,303
Judith C. Crowley	Reg. No. 35,091
Donald F. Mofford	Reg. No. 33,740
Paul D. Durkee	Reg. No. 41,003
Barry Gaiman	Reg. No. 42,562
Richard M. Sharkansky	Reg. No. 25,800
David W. Rouille	Reg. No. 40,150
Kermit Robinson	Reg. No. 48,734
Robert V. Klauzinski	Reg. No. 42,742
Cathy L. Peterson	Reg. No. 41,249

all of Daly, Crowley & Mofford, LLP, 275 Turnpike Street, Suite 101, Canton, Massachusetts 02021-2310, jointly, and each of them severally, my attorneys at law, with full power of substitution, delegation and revocation, to prosecute this application, to make alterations and amendments therein, to receive the patent, and to transact all business in the Patent and Trademark Office connected therewith.

Please direct all telephone calls and address all correspondence to:

David W. Rouille
Daly, Crowley & Mofford, LLP
275 Turnpike Street, Suite 101
Canton, Massachusetts 02021-2310
Telephone no. (781) 401-9988
Facsimile: (781) 401-9966

The Commissioner is hereby authorized to charge any other fees under 37 C.F.R. §1.16 and §1.17 that may be required, or credit any overpayment, to our Deposit Account No. 500845.

23-Sep-2000

Date

Respectfully submitted,

David W. Rouille

David W. Rouille

Reg. No. 40,150

Attorney for the Applicant(s)

Daly, Crowley & Mofford, LLP

275 Turnpike Street, Suite 101

Canton, MA 02021-2310

Tel: (781) 401-9988, x25

Fax: (781) 401-9966



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**NOTICE OF
PATENT APPLICATION ASSIGNMENT**

WHEREAS, Holistix, Inc. a Washington corporation ("ASSIGNOR"), having its principal place of business at 1500 Dexter Avenue North, Seattle, Washington 98109 is the owner of the invention Method and Apparatus for Providing Measurement, and Utilization of, Network Latency in Transaction-Based Protocols for which an application for a United States Patent was filed on _____, with Serial no. 09/740,804, and

WHEREAS, Empirix Inc., a Delaware corporation ("ASSIGNEE"), is desirous of obtaining the entire right, title and interest in, to and under the said invention, the said application, and any patent which may have been granted therefrom;

WHEREAS, Assignor and Assignee are parties, to that certain Asset Purchase Agreement, dated as of August 31, 2001 (the "Purchase Agreement"), the terms, conditions and representations and warranties of which are incorporated herein by reference as if set forth in full;

WHEREAS, pursuant to the Purchase Agreement, Assignor conveyed to Assignee substantially all of the assets of a going business;

NOW, THEREFORE, in consideration of the premises set forth above and in the Purchase Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, ASSIGNOR has sold, assigned, transferred and set over, and by these presents does hereby sell, assign, transfer and set over, unto the said ASSIGNEE, its successors, legal representatives and assigns, the entire right, title and interest in, to and under the said invention, and the said United States application and all divisions, renewals and continuations thereof, and all Patents of the United States which have been or may be granted thereon and all reissues and extensions thereof; and all applications for industrial property protection, including, without limitation, all applications for patents, utility models, and designs which may hereafter be filed for said invention in any country or countries foreign to the United States, together with the right to file such applications and the right to claim for the same the priority rights derived from said United States application under the Patent Laws of the United States, the International Convention for the Protection of Industrial Property, or any other international agreement or the domestic laws of the country in which any such application is filed, as may be applicable; and all forms of industrial property protection, including, without limitation, patents, utility models, inventors' certificates and designs which may be granted for said invention in any country or countries foreign to the United States and all extensions, renewals and reissues thereof;

AND ASSIGNOR HEREBY authorizes and requests the Commissioner of Patents and Trademarks of the United States, and any official of any country or countries foreign to the United States whose duty it is to issue patents or other evidence or forms of industrial property protection on applications as aforesaid, to issue the same to the said ASSIGNEE, its successors, legal representatives and assigns, in accordance with the terms of this instrument.

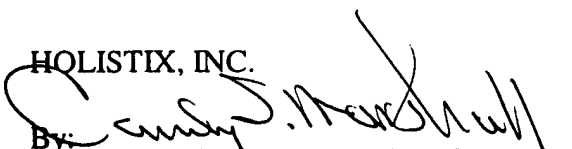
AND ASSIGNOR HEREBY covenants and agrees that its has full right to convey the entire interest herein assigned, and that it has not executed, or will not execute, any agreement in conflict herewith.

AND ASSIGNOR HEREBY further covenants and agrees that it will communicate to the said ASSIGNEE, its successors, legal representatives and assigns, any facts known to it respecting said invention, and testify in any legal proceeding, sign all lawful papers, execute all divisional, continuing, reissue and foreign applications, make all rightful oaths, and generally do everything possible to aid the said ASSIGNEE, its successors, legal representatives and assigns, to obtain and enforce proper protection for said invention in all countries.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment to be executed by their respective duly authorized representatives this 31st day of August, 2001.

ASSIGNOR:

HOLISTIX, INC.

By: 
Name: Candy J. Marshall, Secretary

ASSIGNEE:

EMPIRIX INC.

By: _____
Name:

**NOTICE OF
PATENT APPLICATION ASSIGNMENT**

WHEREAS, Holistix, Inc. a Washington corporation ("ASSIGNOR"), having its principal place of business at 1500 Dexter Avenue North, Seattle, Washington 98109 is the owner of the invention Method and Apparatus for Providing Measurement, and Utilization of, Network Latency in Transaction-Based Protocols for which an application for a United States Patent was filed on _____, with Serial no. 09/740,804, and

WHEREAS, Empirix Inc., a Delaware corporation ("ASSIGNEE"), is desirous of obtaining the entire right, title and interest in, to and under the said invention, the said application, and any patent which may have been granted therefrom;

WHEREAS, Assignor and Assignee are parties, to that certain Asset Purchase Agreement, dated as of August 31, 2001 (the "Purchase Agreement"), the terms, conditions and representations and warranties of which are incorporated herein by reference as if set forth in full;

WHEREAS, pursuant to the Purchase Agreement, Assignor conveyed to Assignee substantially all of the assets of a going business;

NOW, THEREFORE, in consideration of the premises set forth above and in the Purchase Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, ASSIGNOR has sold, assigned, transferred and set over, and by these presents does hereby sell, assign, transfer and set over, unto the said ASSIGNEE, its successors, legal representatives and assigns, the entire right, title and interest in, to and under the said invention, and the said United States application and all divisions, renewals and continuations thereof, and all Patents of the United States which have been or may be granted thereon and all reissues and extensions thereof; and all applications for industrial property protection, including, without limitation, all applications for patents, utility models, and designs which may hereafter be filed for said invention in any country or countries foreign to the United States, together with the right to file such applications and the right to claim for the same the priority rights derived from said United States application under the Patent Laws of the United States, the International Convention for the Protection of Industrial Property, or any other international agreement or the domestic laws of the country in which any such application is filed, as may be applicable; and all forms of industrial property protection, including, without limitation, patents, utility models, inventors' certificates and designs which may be granted for said invention in any country or countries foreign to the United States and all extensions, renewals and reissues thereof;

AND ASSIGNOR HEREBY authorizes and requests the Commissioner of Patents and Trademarks of the United States, and any official of any country or countries foreign to the United States whose duty it is to issue patents or other evidence or forms of industrial property protection on applications as aforesaid, to issue the same to the said ASSIGNEE, its successors, legal representatives and assigns, in accordance with the terms of this instrument.

AND ASSIGNOR HEREBY covenants and agrees that its has full right to convey the entire interest herein assigned, and that it has not executed, or will not execute, any agreement in conflict herewith.

AND ASSIGNOR HEREBY further covenants and agrees that it will communicate to the said ASSIGNEE, its successors, legal representatives and assigns, any facts known to it respecting said invention, and testify in any legal proceeding, sign all lawful papers, execute all divisional, continuing, reissue and foreign applications, make all rightful oaths, and generally do everything possible to aid the said ASSIGNEE, its successors, legal representatives and assigns, to obtain and enforce proper protection for said invention in all countries.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment to be executed by their respective duly authorized representatives this 31st day of August, 2001.

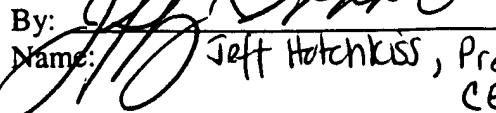
ASSIGNOR:

HOLISTIX, INC.

By: _____
Name:

ASSIGNEE:

EMPIRIX INC.

By: 
Name: Jeff Hotchkiss, President and CEO

STATE OF WASHINGTON

COUNTY OF KING

) SS.

)

On this 31st day of August, 2001, before me personally appeared Candy S. Marshall to me personally known, who, being by me duly sworn, did say that (s)he is the Secretary of HOLISTIX, INC., a Washington corporation, and that said instrument was signed and sealed on behalf of said corporation, by all necessary authority; and said She acknowledged said instrument to be the free act and deed of said corporation.

In witness whereof, I have hereunto attached my hand and notarial seal, at the County and State aforesaid on the day and year last above written.



Teresa L. Edwards
Notary Public

My Commission Expires: 12/28/02

COMMONWEALTH OF MA)

COUNTY OF Middlesex) SS.
)

On this 31st day of August, 2001, before me personally appeared Jeffrey Hotchkiss, to me personally known, who, being by me duly sworn, did say that he is the President and CEO of EMPIRIX INC., a Delaware corporation, and that said instrument was signed and sealed on behalf of said corporation, by all necessary authority; and said Jeffrey Hotchkiss acknowledged said instrument to be the free act and deed of said corporation.

In witness whereof, I have hereunto attached my hand and notarial seal, at the County and Commonwealth aforesaid on the day and year last above written.

David W. Rouille
Notary Public

My Commission Expires: 9/20/07

LibC1268016.1

DAVID W. ROUILLE
Notary Public
My Commission Expires
September 20, 2007